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January 13, 1992

RQ-312

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, TX 78711-2548

Attention: Opinion Committee

Re: Attorney General Opinion Request

Dear General Morales:

Pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on whether or not a County Commissioners' Court can refuse to fund the salaries of some of the employees of the County Assessor-Collector in order to persuade the County Assessor-Collector to contract with an appraisal district. The Galveston County Tax Assessor-Collector has raised this question.

The county tax assessor-collector is a constitutional office established in Article VIII, Section 14, which provides that such officer

...shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the legislature. TEX CONST. Art. VIII, § 14.

The commissioners' court may contract with an appraisal district to provide some of the appraisal and collection services only with the approval of the county assessor-collector. Tax Code section 6.24(b) (Vernon 1983). Op. Tex. Att'y Gen. No. JM-833 (1987)

If the county assessor-collector refuses to approve the contract with the appraisal district can the commissioners court then eliminate the employees from the collection division of the assessor-collector's office?

The commissioners' court has the power to determine the number of employees that may be appointed to work in the County Assessor-Collectors' office. Local Government Code § 151.002.

The commissioners' court also has the authority to set the salaries of the employees of the elected officials of the county. Local Government Code § 151.011. Vondy v. Com'rs Court of Uvalde County, 714 S.W.2d 417 (Tex. App. - San Antonio 1986, pet. ref'd).

The commissioner courts' power to destroy the ability of another governmental office to function has been recognized by prior court decisions. Bomer v. Ector County Com'rs Court, 676 S.W.2d 662 (Tex. App. - El Paso 1984, pet. ref'd); Vondy, supra.

The County Assessor-Collector may seek a writ of mandamus to compel commissioners court to set and pay a reasonable salary for county employees. TEX CONST., Article V, section 8. Vondy, supra.

Actions of the commissioner court are subject to review by the district court in the exercise of its general supervisory control over the orders of the commissioners court. The standard of review is whether the commissioners court clearly abused its discretion by an "arbitrary and capricious standard". Bomer, supra.

The court of appeals in San Antonio has held that the commissioners court cannot attempt to restrict or abolish a constitutionally established office by refusing to reasonably compensate the holder of such office and cannot attempt to restrict the office by refusing to allow or preventing an elected official from performing duties required of him. Vondy, supra.

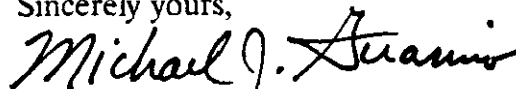
Elimination of deputy assessor-collectors from the collections division of the office would restrict the ability of the office holder to perform the duties required of him. It is the position of this writer that eliminating deputy assessor-collectors in this manner would be an abuse of discretion by the county commissioners.

Our Tax Assessor-Collector also raises a second question. If the functions of the county assessor-collector are transferred to the appraisal district with the tax assessor-collector's consent does he remain personally liable for the loss of public funds if the appraisal district is negligent or engages in misconduct? Property Tax Code § 6.275.

As the contract with an appraisal district only assists the assessor-collector and does not supplant him, it would appear that he would remain personally liable. see, Op. Tex. Att'y Gen. No. JM-833 (1987)

Your opinion on these questions is requested.

Sincerely yours,



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